HIGH COURT OF UTTARANCHAL AT NAINIAL

Writ Petition No. 307 of 2006 (MS)

Dr. Praveen Kumar Rastogi s/o Late Dr. Virendra Kumar Rastogi, Moh. Khalsa, Kashipur, District Udham Singh Nagar
..... Petitioner.

Versus

1. Sri Raj Gopal Arya s/o Babu Ram Verma
   D-31 Type IV Quarter, New Brook Husters Estate, Shimla
2. Sri Peeyush Kumar Rstogi s/o Late Virendra Kumar Rastogi,
3. Sri Gaurav Rastogi s/o Sri Virendra Kumar Rastogi
4. Km. Sangeeta Rastogi d/o Sri Virnedra Kumar Rastogi
   All residents Mohalla Khalsa, Kashipur, District Udham Singh Nagar
5. Addl. District Judge, Fast Track Court, Kashipur ..... Respondent.

Sri Jagdish Prasad, Advocate for the petitioner.
Standing Counsel for the respondents.

Dated: 4.4.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 26th March 2006 passed by the Additional District Judge, Kashiur in Rent Control Appeal No. 4 of 2005.

Brefly stated the respondent no. 1 has moved an application for release of shop in the tenancy of the petitioner and respondent no. 2 to 4 on the ground that the petitioner's father had been tenant of the disputed shop and after his death

the petitioner and other members of his family are the tenants. The petitioner contested the case alleging that the need of the respondent no. 1 is not bonafide and the respondent no., 1 has been stated permanently in Shimla. The prescribed authority has come to the conclusion that the need of the applicant is not bonafide and dismissed the application for release vide order dated 23.07.2005. Feeling aggrieved the respondent no. 1 filed an appeal before the Additional District Judge, Kashipur. During the pendency of appeal the petitioner filed an application on 22.03.2006 and affidavit together with a copy of bill dated 5.10.2004 to be brought on record in appeal. The appellate court invited objection from the respondent no.1 and rejected the application of the petitioner on the ground that the application ought to have been filed before the Prescribed authority.

Inspite of the notices issued to the respondent no. 1, none has appeared on behalf of the respondent no. 1 So far as additional evidence is concerned the appellate court can take into consideration the subsequent events during the pendency or rent control proceedings. While hearing the appeal the appellate court is at liberty to consider the genuineness of the documents itself. The application for additional evidence filed at the appellate State cannot be rejected on technical grounds.

Sub Section (2) of Section 10 of Act No. 13 of 1972 reads as under:

"The appellate authority may confirm, very or rescind the order, or remand the case to the District Magistrate for rehearing, and may also take any additional evidence, and pending its decision, stay the operation of the order under appeal on such terms, if any, as it thinks fit."

In view of the aforesaid facts and circumstances the order passed by the appellate Court is quashed. Liberty is given to the petitioner to apply afresh in accordance with the provisions of sub section (2) of Section 10 of the U.P. Act No. 13 of 1972 and the same shall be considered by the appellate Court. The appeal shall be decided within four months after obtaining the certified copy of this order.

Accordingly, writ petition is disposed of. No order as to costs.

Dated: 4.4.2006 **Rajesh Tandon, J.**